

## **REMARKS**

Claims 1-32 are pending in the application. By this amendment, Claims 1, 2, 3, 16, 15, and 27-30 have been amended and claims 31 and 32 have been added. The basis for these amendments can be found throughout the specification, claims and drawings as originally filed. No new matter has been added.

The preceding amendments and the following remarks are believed to be fully responsive to the outstanding Office Action and are believed to place the application in condition for allowance. In view of the preceding amendments and the following remarks, the rejections are traversed and reconsideration of this application is respectfully requested.

The Applicant's representative would like to thank the Examiner for the interview conducted on March 8, 2004. Various claims, including 1, 15, and 26, were discussed in light of the cited art of record. No agreement as to the allowability of the claims was reached during the interview.

### **REJECTION UNDER 35 U.S.C. § 112**

Claims 2, 3, 16, 17, and 27 are rejected under 35 U.S.C. § 112 as failing to comply with the enablement requirement. Claims 2, 3, 16, 17, and 27 have been amended in a non-narrowing manner to overcome and render moot this rejection.

### **REJECTION UNDER 35 U.S.C. § 103**

Claims 1, 12, 14, 29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Evans et al. (U.S. Patent No. 4,516,569) in view of Schmitt et al.

(U.S. Patent No. 3,739,773). Claims 2-11, 13, 15-28, 30 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Evans et al (U.S. Patent No. 4,516,569) in view of Schmitt et al. (U.S. Patent No. 3,739,773) in view of Bramlet (U.S. Patent No. 5,984,970). Applicants respectfully traverse these rejections.

Independent Claims 1, 15, 26, 29 and 30 each recite “a resorbable material”. In contradistinction, only Schmitt et al. discloses providing a resorbable material. In addition, the resorbable devices disclosed in Schmitt et al. are limited to those fixing fractures of a selected bone portion. In particular, substantially long bone portions are generally fixed together with the devices. Contrary to this, Evans et al. discloses providing a fixation device which is substantially permanent and not formed of a resorbable material. Evans et al. discloses providing the material formed of an ultra high molecular weight polyethylene or polypropylene. See, column 1, lines 65-67. Therefore, it would not have been obvious to one skilled in the art to combine Evans et al. with Schmitt et al.

Independent Claim 1 and independent Claim 30 recite “the middle portion is operable to have a user formed fixed curvature”. Neither Evans et al. nor Schmitt et al. disclose providing a device that may include a user selectable fixed curvature. In addition, Bramlet teaches specifically allowing for a flexible portion between two ends of an implant, therefore teaching away from providing a fixed curvature at all. Therefore, Bramlet should not be properly combined with Evans et al. and Schmitt et al. The Applicant submits that independent Claims 1 and 30 claim a device not described nor suggested in Evans et al. and Schmitt et al., either alone or combination. Rather, Evans

et al. discloses a device that is substantially permanent within a body and is provided to a user in a fixed and unmovable position.

Independent Claims 15 and 29 recite “wherein the member has a first end portion to engage the first phalange ... and a second end portion to engage the second phalange spaced and opposed from the first end portion”. Neither Evans et al. nor Schmitt et al. disclose providing a device to interconnect a plurality of phalanges. As discussed above, Schmitt et al. discloses providing a device which allows for fixation of a bone that has been fractured to allow healing or knitting of the bone. In addition, Evans et al. teaches a substantially non-absorbable device that may be interconnected with a finger portion. Nevertheless, neither of the references, alone or in combination, teach or fairly suggest providing a resorbable member that interconnects a first phalange with a second phalange. In addition, Bramlet teaches providing a multi-piece assembly that allows for flexing between the various portions of the assembly. Contrary to this, the various phalanges interconnected as presently claimed are generally fixed at a selected angle. Therefore, Bramlet, either alone or in combination with Evans et al. and Schmitt et al. does not teach nor fairly suggest the invention as presently claimed.

Independent Claim 26 recites a method of fusing a first phalange to a second adjacent phalange. Neither Evans et al. nor Schmitt et al. disclose interconnecting a first phalange and a second adjacent phalange with an elongated member comprising a resorbable material. In addition, neither reference, either alone or in combination, appear to teach or fairly suggest “inserting the device into the bore in the first distal end of the first phalange and into the bore in the proximal end of the second phalange”. In addition, Bramlet teaches, as discussed above, providing a plurality of pieces that are

interconnected to form an assembly. Therefore, it does not appear that Bramlet may be fairly combined with Evans et al. and Schmitt et al. to achieve each of the elements of the presently claimed invention. In addition, as discussed above, Bramlet teaches providing a device that is substantially flexible and does not provide a fixed angle.

In addition, Applicants submit that new Claims 31 and 32 are in condition for allowance. In particular, new Claim 31 recites "forming the curvature of the middle portion by a user". None of the references, either alone or in combination, fairly teach or suggest having a user form an angle in a member for implantation.

Therefore, Applicants submit that each of the claims presently pending are in a condition for allowance, as each of the references either alone or in combination, do not fairly suggest the elements of the presently pending claims.

#### CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: March 8, 2007

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